

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

DARRELL LYNN BANKSTON, #R1725

PLAINTIFF

VERSUS

CIVIL ACTION NO. 5:03cv346-DCB-JCS

UNITED STATES DISTRICT COURT

DEFENDANTS

ORDER

This matter is before the Court on the plaintiff's motion for injunctive relief [19] filed June 20, 2008. The plaintiff argues the following: 1) the "strikes" provision of 28 U.S.C. § 1915 violates his constitutional right of access to the courts; and 2) the court should reconsider the judgment entered in this civil action which resulted in a "strike" being counted against him.

Initially, this Court finds the United States Court of Appeals for the Fifth Circuit in Carson v. Johnson, 112 F.3d 818, 821 (5th Cir. 1997) has held that the three-strikes provision of the PLRA "does not prevent a prisoner with three strikes from filing civil actions; it merely prohibits him from enjoying IFP status." Thus, the plaintiff is not denied access to the courts and therefore, his due process rights or his First Amendment rights are not violated. Furthermore, the Fifth Circuit has determined that the three-strikes provision of the PLRA does not violate equal protection since it is rationally related to a legitimate state interest of "detering frivolous and malicious lawsuits." Id. (citations omitted). Consequently, the plaintiff's argument is without

merit.

Moreover, this is the plaintiff's second request that this court reconsider its judgment [8] dismissing the instant civil action for failure to state a claim and as frivolous.¹ Liberally construing the instant motion and notwithstanding the title placed on the motion by the plaintiff, this court has determined that the motion is in the nature of a motion filed pursuant to Rule 60(b)(6) of the FEDERAL RULES OF CIVIL PROCEDURE.

Having reviewed the motion [18], this Court is not persuaded by the additional information provided by the plaintiff. Based on the reasons set forth in the order [18] of May 21, 2004, this Court finds that there is no reason to alter its previous ruling. Accordingly, it is,

ORDERED AND ADJUDGED that plaintiff's motion for injunctive relief [19] is denied.

IT IS FURTHER ORDERED AND ADJUDGED that plaintiff is reminded that he has been warned in the order [18] of May 21, 2008, that sanctions will be imposed if he files another motion of similar nature as the one at bar in the instant civil action.

SO ORDERED AND ADJUDGED this the 25th day of June, 2008.

s/David Bramlette
UNITED STATES DISTRICT JUDGE

¹The plaintiff filed his first motion to reinstate this case [17] on May 10, 2004, which was denied by an order [18] entered on May 21, 2004. The order [18] entered on May 21, 2004, warned plaintiff that his action borders on malicious litigation and that future attempts may lead to sanctions being imposed.